S.B.CRIMINAL MISC. PETITION NO.1259/2006
(Shanti Prakash Vs. State of Raj.)

Date of order : : 08.05.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Sandeep Mehta, for the petitioner.
Mr.Ashok Upadhyay, PP for the State.

By way of this misc. petition under Section 482 Cr.P.C., the petitioner is challenging the order dated 9.5.2006 passed by learned Additional Sessions Judge No.2 Bhilwara whereby he has upheld the order dated 18.7.2005 passed by learned Judicial Magistrate, First Class, Jahajpur. The learned Magistrate, vide its order dated 18.7.2005, framed the charges against the petitioner for offence under Section 420, 467, 468, 471 IPC.

The main contention of learned counsel for the petitioner is that petitioner was posted as Industries Expansion Officer of Panchayat Samiti, Jahajpur. He was not concerned with the loan agreements etc. nor he was responsible for issuance of

forged guarantee letter. It is further contended that petitioner has not been granted any opportunity of being heard. Learned Magistrate has framed the charges against the petitioner without complying with the provisions of Section 239, 240 Cr.P.C. It is settled law that if upon consideration, examination and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. Since learned Magistrate has passed the order of framing charge without applying his mind and without affording opportunity of hearing to the petitioner, therefore, the order of framing charge dated 18.7.2005 passed by learned Judicial Magistrate, First Class, Jahajpur is bad in eye of law. Learned revisional court has also not considered the matter in true perspective and dismissed the revision petition filed by the petitioner.

Learned Public Prosecutor has supported the orders passed by both the courts below and stated that learned Magistrate after considering the material on record has framed

the charges. It does not require any interference.

I have considered the rival arguments advanced by learned counsel for both the parties and gone through the orders passed by learned Magistrate as well as learned Additional Sessions Judge. It appears from the order-sheets of the trial court that on 30.4.2005, the post of Presiding Officer was vacant and as such, the case was fixed for 30.6.2005. On that day, the matter was fixed for 18.7.2005 for arguments on charge. Learned Magistrate, on 18.7.2005, framed charges against the petitioner for offence under Section 420, 467, 468, 471 IPC. The order of framing charge dated 18.7.2005 passed by learned Magistrate reads as under:-

> "18.7.05
> ए.पी.पी. उप.। मुलजिमान उप.। पृथक से आरोप धारा अन्तर्गत 420, 467, 468, 471 आई.पी.सी. का लगाया जाकर सुनाया व समझाया गया तो आरोप से इन्कार कर अन्वीक्षा की मांग की। पत्रावली वास्ते साक्ष्य दिनांक 29.8.06 को पेश हो।"

From perusal of the said order, it is clear that learned Magistrate has not given any reason why he is framing the

charges and whether there is any ground for presuming that the accused had committed any offence. Learned Magistrate has not heard accused petitioner before passing the order of framing charge. Ithas not been passed in accordance with the provisions of Section 240 Cr.P.C. Learned Magistrate before framing the charge, should have considered the complete record and after hearing the parties, should have reached to the conclusion that he is of opinion that there is ground for presuming that the accused had committed an offence triable under this Chapter which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. But learned Magistrate has not even heard the accused nor Public Prosecutor and passed the order of framing charge without assigning any reason. The learned Additional Sessions Judge has also not considered the matter in true perspective and dismissed the revision petition filed by the petitioner.

In view of this matter, the orders of both the courts below dated 9.5.2006 & 18.7.2005 are quashed and set aside and the matter is remanded back to the learned Judicial Magistrate,

First Class, Jahajpur with these directions that after hearing the accused and examining the complete record, will pass a fresh reasoned order in accordance with the law without being prejudiced by the order passed by learned revisional court.

Accused-petitioner may raise all objections which have been raised in this misc. petition before the learned Judicial Magistrate, First Class, Jahajpur.

With the aforesaid observations and directions, this misc. petition is disposed of.

(KRISHAN KUMAR ACHARYA), J.

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